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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,695	08/21/2001	Terrance D. Kending	AD6372 US CIP3	7120

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E I DU PONT DE NEMOURS AND COMPANY
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EXAMINER	
BRUENJES, CHRISTOPHER P	
ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,695

Applicant(s)

NAITO, SUSUMU

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

WITHDRAWN REJECTIONS

The objection to the abstract and the 35 U.S.C. 112 rejection of record in Paper #3, Page 2, Paragraphs 1 and 2 have been withdrawn due to Applicant's amendment in Paper #5.

The 35 U.S.C. 103 rejections of claims 1-15 over Garland in view of Aaker of record in Paper #3, Pages 4-6 Paragraph 3 have been withdrawn due to Applicant's arguments in Paper #5.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8-12, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Wolf et al (US 2002/0197425 A1).

Wolf et al anticipate a laminate in combination with a tray (see abstract). The laminate comprises at least two films in

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which the inner film has heat shrinkage of 7% to 60% (p.3, paragraph 31). The outer film has no heat shrinkage or 5% less than the inner film, because the outer film has a heat shrinkage that is less than 10% (see abstract). Wolf et al further teach that the inner film has a heat-shrink attribute greater than that of the outer film (p.3, paragraph 31). The inner film comprises a polymer in the sealant layer of polyester (p.4, paragraph 43 and p.5, paragraph 56). The polyester is a polymer having at least 80% by weight polyethylene terephthalate polymer (p.8, paragraph 96). The film laminate further comprises an adhesive coating between the sealing layer of the inner film and the outer film represented by the tie layer (C) (p.4, paragraphs 36 and 39). The tie layer is a solventless adhesive coating comprising polyurethane (p.8, Paragraph 99). The film laminate further comprises a barrier layer represented by barrier layer (G) adjacent the inner film (p.7, paragraph 77 and 82). The outer film is selected from the group consisting of nylon, polypropylene, polyethylene, ionomer, acid copolymer, ethylene vinyl acetate, polyethylene terephthalate, ethylene vinyl alcohol, polyvinylidene chloride, and coextruded combinations thereof (p.7, paragraphs 84 and 89 and p.8, paragraph 95 and 97). Note the limitation "solventless adhesive coating" in all of the claims is a new limitation not taught in the parent

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applications and therefore the claims receive only the priority or filing date of the current application, which is August 21, 2001.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al (US 2002/0197425 A1) in view of Tsukamoto et al (USPN 6,063,462).

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Wolf et al teach a laminate in combination with a tray (see abstract). The laminate comprises at least two films in which the inner film has heat shrinkage of 7% to 60% (p.3, paragraph 31). The outer film has no heat shrinkage or 5% less than the inner film, because the outer film has a heat shrinkage that is less than 10% (see abstract). Wolf et al further teach that the inner film has a heat-shrink attribute greater than that of the outer film (p.3, paragraph 31). The inner film comprises a polymer in the sealant layer of polyester (p.4, paragraph 43 and p.5, paragraph 56). The polyester is a polymer having at least 80% by weight polyethylene terephthalate polymer (p.8, paragraph 96). The film laminate further comprises a barrier layer represented by barrier layer (G) adjacent the inner film (p.7, paragraph 77 and 82). The outer film is selected from the group consisting of nylon, polypropylene, polyethylene, ionomer, acid copolymer, ethylene vinyl acetate, polyethylene terephthalate, ethylene vinyl alcohol, polyvinylidene chloride, and coextruded combinations thereof (p.7, paragraphs 84 and 89 and p.8, paragraph 95 and 97). The inner and outer films are laminated to each other by adhesive bonding (p.11, paragraph 124) and adhesive used in the application include polyurethane adhesive. The film laminate further comprises an adhesive coating between the sealing layer of the inner film and the outer film

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represented by the tie layer (C) (p.4, paragraphs 36 and 39).

The tie layer is a solventless adhesive coating comprising polyurethane (p.8, Paragraph 99).

Wolf et al fail to explicitly teach that the polyurethane adhesive used in order to laminate the two films together is elastomeric, but teaches that adhesives used include polyurethane, ethylene/vinyl acetate copolymer, ethylene/ethyl acrylate copolymer, anhydride-modified olefin copolymers (p.8, paragraph 99). Tsukamoto et al teach that an adhesive that will effectively secure a heat shrinkable film made up of polyethylene terephthalate with a polyvinylidene chloride coating to a film made up of polyolefins such as the inside layer of the barrier film includes the same adhesives as taught by Wolf et al (col.7, 1.41-45). However, Tsukamoto further teaches that the polyurethane used as an adhesive is elastomeric. One of ordinary skill in the art would have recognized that any of the adhesives taught by Tsukamoto and Wolf are equivalents and can be substituted for each other, and therefore recognize that polyurethane elastomer is substituted for one of the other adhesives depending on the intended end result of the laminate, as taught by Tsukamoto et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention

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was made to substitute polyurethane elastomer adhesive for the adhesive taught by Wolf et al, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. See *In re Leshin*, 125 USPQ 416.

ANSWERS TO APPLICANT'S ARGUMENTS

Applicant's arguments regarding the objection to the abstract and the 35 U.S.C. 112 rejections of record have been considered but they are moot since the rejections have been withdrawn.

Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-15 of record have been considered but they are moot since the rejections have been withdrawn.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kocher et al (USPN 5,779,050); Kocher (USPN 5,779,832); Ramesh et al (USPN 6,610,392).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to

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Christopher P Bruenjes whose telephone number is 703-305-3440.

The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

October 16, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER


10/17/03